

**United States Department of Labor
Employees' Compensation Appeals Board**

T.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
West Sacramento, CA, Employer**

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**Docket No. 06-1344
Issued: March 28, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 1, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 28, 2005 merit decision denying her claim for acceptance of additional employment injuries or periods of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained employment-related right upper extremity conditions or periods of disability other than those already accepted by the Office.

¹ The record also contains an October 17, 2005 Office decision approving attorney fees. Appellant has not appealed this decision to the Board and the matter is not currently before the Board.

FACTUAL HISTORY

On December 19, 2002 appellant, then a 58-year-old postal clerk, filed an occupational disease claim alleging that her right hand condition was “still deteriorating” and “must be fixed.”² She first became aware of her condition on July 31, 2000 and became aware of its relation to her employment on October 19, 2002. Appellant did not stop work at the time she filed her claim, but began working in a light-duty position in February 2003.

In an accompanying statement, appellant indicated that the date of her injury was February 2, 1998 when a steel cage door fell on the back of her right hand. She asserted that she sustained four more right upper extremity injuries between early 1998 and late 2002.³ Appellant claimed that she sustained injury around mid March 1999 due to unloading, lifting and carrying trays of mail weighing up to 50 pounds for several days (known as breaking down mail), on July 25, 1999 due to breaking down mail, on July 31, 2000 due to sweeping heavy mail trays off tray carriers and placing them into cages,⁴ and on or about October 19, 2002 when she had to use her “right hand as a stick” to perform her work.

On January 22, 2003 the Office requested that appellant submit additional factual and medical evidence in support of her claim. Appellant submitted a February 20, 2003 statement in which she provided more details regarding her right hand condition and the employment factors she implicated in her prior statement. She asserted that all her right hand injuries were focused on the area of the radial nerve where she was struck by the steel cage door on February 2, 1998.

Appellant submitted a February 27, 2003 work status report in which Dr. Stephen L. Mandaro, an attending Board-certified occupational medicine physician, listed February 2, 1998 as the date of injury and diagnosed hand contusion. On March 4, 2003 Dr. Mandaro completed another form report and listed October 19, 2002 as the date of injury and “tray fell on hand” as the mechanism of injury. He diagnosed hand contusion due to the October 19, 2002 injury.

In a March 26, 2003 decision, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment-related right upper extremity condition other than those already accepted by the Office. The Office

² Appellant stated, “I use my right hand as a stick sometimes in conjunction with left hand which does all work.” The claim was given file number 13-2070171.

³ Appellant indicated that the February 2, 1998 injury did not appear on safety and health reports produced by the employing establishment.

⁴ Appellant asserted that one heavy tray “fell into her hands” as she pulled it out from under a ledge and that she felt a tearing sensation in the back of her right hand. She indicated that after she dropped the tray she saw a “rectangular lump” on the back of her hand without blood or bruising.

discussed the accepted March 1999 and July 31, 2000 employment conditions but noted that these conditions had resolved.⁵

In a February 27, 2003 narrative report, Dr. Mandaro stated that he first saw her on that date and that she reported sustaining four right hand injuries, the first on February 2, 1998 when a cage door fell on her hand and the last in October 1992. He indicated that appellant held her right hand in a “claw fashion,” exhibited normal results on sensory examination and had good range of motion except upon extension. Dr. Mandaro diagnosed hand contusion and paresthesias.

On May 14, 2003 Dr. Rosalind A. Hsia, an attending Board-certified neurologist, stated that appellant reported having more trouble with her right hand and was getting the “same sensory symptoms” in her left hand. She stated, “[Appellant’s] exam[ination] was not able to be done due to time constraints caused by going over her functional status forms” and diagnosed complex regional pain syndrome of the hands and arms, probable cervical radiculopathy and lumbar spondylosis with asymptomatic S1 radiculopathy. On July 14, 2003 Dr. Hsia stated that appellant sustained injury when her right hand was struck by a metal cage door. She noted that her “history of symptoms following that injury is consistent with the diagnosis of complex regional pain syndrome (reflex sympathetic dystrophy) affecting the right hand and arm” and concluded that the “blow to her right arm and hand is directly, and without doubt, the cause of this chronic pain syndrome and her disability.” Dr. Hsia stated that appellant had “mirror symptoms” involving her left arm and hand and that this condition was also employment related.

On October 8, 2003 Dr. Hsia stated that appellant was first injured on February 2, 1998 when the back of her right hand was struck by a metal cage door. This injury was aggravated on July 31, 2000 when she experienced a tearing sensation and weakness in her right hand at the site of her original injury after a mail tray weighing about 50 pounds fell on her hands. Dr. Hsia stated:

“Her symptoms were consistent with a diagnosis of complex regional pain syndrome/reflex sympathetic dystrophy affecting her right hand and arm. The force of the tray falling into her right hand is directly, and without doubt, the cause of this chronic pain syndrome at the site of the injury and her disability. Her disability was increased by her second aggravating injury at the same site on her right hand, and her ability to grasp with her right hand substantially diminished. Her left hand has certain symptoms which mirror some of those of the right hand, but to a far lesser extent. These mirror symptoms occur very commonly and therefore should also be considered directly caused by her

⁵ The Office noted that it had been accepted that appellant sustained right arm tendinitis under a claim which had a March 8, 1999 date of injury, but that this condition had since resolved (file number 13-1184162). The Office also indicated that it had been accepted that on July 31, 2000 appellant sustained an aggravation of preexisting osteoarthritis of her right hand which ceased by August 9, 2000 (file number 13-2016911). The Office indicated that it had no prior claim for a February 2, 1998 or July 25, 1999 injury.

industrial injury. Because the direct physical injury was to her right hand, this hand is significantly more impaired than the left.”⁶

On October 21, 2003 Dr. Asish Ghoshal, an attending Board-certified neurologist, stated that appellant reported that she sustained an injury in February 1998 when a metal door struck her right hand and that she sustained another injury on July 31, 2000 when a mail tray weighing approximately 50 pounds “fell on her hands.” Dr. Ghoshal reported normal findings upon examination and stated that despite appellant’s subjective complaints he did not “see any evidence of neurologic impairment.”

Appellant requested a review of the written record by an Office hearing representative. By decision dated and finalized December 15, 2003, the Office hearing representative affirmed the March 26, 2003 decision. The hearing representative stated that there was no record that appellant had previously filed a claim for a February 2, 1998 injury and determined that this claimed injury was not accepted as having occurred. She stated that it was accepted that appellant lifted mail trays weighing up to 50 pounds but that she did not submit sufficient medical evidence to show that she sustained an additional injury due to these duties.

On October 13, 2003 Dr. Robert J. Harrison, an attending Board-certified occupational medicine physician, stated that appellant reported that she sustained an injury on July 31, 2000 when a heavy mail tray she was removing suddenly dropped and caused a tearing sensation in her right hand. Dr. Harrison noted that appellant exhibited significant right hand weakness on grip strength testing and stated, “I believe your clinical picture is most consistent with either focal dystonia or a regional pain syndrome.” He indicated that appellant did not report significant pain and noted that there “may be a situation here of focal hand weakness following the specific injury of July 31, 2000.”

The record also contains a January 26, 2004 form report in which Dr. Mandaro listed February 2, 1998 as the date of injury and diagnosed hand contusion and a March 4, 2003 form report in which he listed October 19, 2002 as the date of injury and diagnosed hand contusion due to that injury. On March 1, 2004 Dr. Mandaro stated that appellant had “neuropathy of the right hand as a result of multiple injuries.”

On April 15, 2004 Dr. John W. Ellis, a Board-certified occupational medicine physician, stated that appellant sustained right hand injuries on February 2, 1998 and July 31, 2000. Dr. Ellis indicated that he reviewed his March 3, 2004 “permanent partial disability report” and recommended various work restrictions.⁷ On May 5, 2004 Dr. Ellis stated that appellant reported that she sustained right hand injuries on February 2, 1998 and July 31, 2000 as well as on January 19, 2002 when she used her left arm to remove heavy mail from a hamper. He

⁶ Appellant submitted the findings of December 2001 magnetic resonance imaging (MRI) scan testing of the right wrist which showed normal results. The findings of the December 2003 MRI scan testing revealed small cysts at the first and second metacarpal joints of the right hand, likely representative of osteoarthritis and mild joint fluid in the second to fourth metacarpal phalangeal joints suggestive of possible rheumatoid arthritis. The findings of November 2003 electromyogram (EMG) testing showed normal latencies in the right median, ulnar and radial nerves.

⁷ The record does not contain a March 3, 2004 report of Dr. Ellis.

diagnosed strains of the left thoracic paraspinal musculature and the left forearm and indicated that these conditions were directly related to appellant's employment due to the fact that she overused her left arm. On August 5, 2004 Dr. Ellis stated that appellant reported that on February 2, 1998 a steel cage door fell on the back of her right hand and that on July 31, 2000 a 50-pound tray fell into her hands causing her to feel a tearing sensation in the same area of the right hand. He diagnosed a crush injury of the right hand resulting in nodule/cystic structure over the dorsal aspect of the wrist, tendinitis/tenosynovitis of the right wrist, and irritation/impingement of the radial nerve of the right hand and concluded that these conditions were due to appellant's February 2, 1998 and July 31, 2000 employment injuries.⁸

By decision dated February 28, 2005, the Office affirmed its December 15, 2003 decision. It determined that appellant's claim that she sustained an injury on February 2, 1998 was barred by the three-year time limitations of the Act. The Office indicated that appellant first mentioned the February 2, 1998 injury in an April 2001 document submitted in connection with a claimed March 1999 injury (file number 13-1184162). It noted that it had previously been accepted under file number 13-1184162 that appellant sustained right hand tendinitis in March 1999 but compensation for this condition was terminated effective November 3, 2002. The Office indicated that it did not have a record of a claim for a July 25, 1999 injury but that this claimed injury was considered to be part of the claim handled under file number 13-1184162. It stated that it was accepted that on July 31, 2000 appellant sustained an aggravation of preexisting osteoarthritis of her right hand, but that it was determined in a separate claim (file number 13-2016911) that this condition had ceased by August 9, 2000. The Office stated that appellant was required to sort or "break down" mail at least through January 2003, a task which required lifting mail trays weighing up to 50 pounds. It indicated that appellant's left hand and arm complaints were being handled under another claim (file number 13-2097387) and that the only issue that remained was whether appellant was entitled to compensation for any injury after November 3, 2002 which was caused by her regular duties of breaking down mail. The Office determined that appellant had not submitted sufficient medical evidence to establish such entitlement to compensation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁹ has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹⁰ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion

⁸ Appellant also submitted reports dated between March and September 1999 in which Dr. Michael Bugola, an attending Board-certified occupational medicine physician, indicated that she had right wrist tendinitis.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

Section 8122(a) of the Act states, "An original claim for compensation for disability or death must be filed within three years after the injury or death."¹² Section 8122(b) provides that in latent disability cases, the time limitation does not begin to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between his employment and the compensable disability.¹³ When a traumatic injury definite in time, place and circumstances is involved, the time for giving notice of injury and filing for compensation begins to run at the time of the incident, even though the employee may not have been aware of the seriousness or ultimate consequences of his injury.¹⁴ Even if an employee does not file a claim form within the prescribed period, her claim would still be regarded as timely under section 8122(a)(1) of the Act if her immediate superior had actual knowledge of the injury within 30 days¹⁵ or under section 8122(a)(2) if written notice of injury was given within 30 days as specified in section 8119.¹⁶

ANALYSIS

Appellant claimed that she sustained right hand injuries on February 2, 1998 when a steel cage door fell on the back of her right hand, in mid March 1999 due to unloading, lifting and carrying trays of mail weighing up to 50 pounds for several days (known as breaking down mail), on July 25, 1999 due to breaking down mail, on July 31, 2000 when a 50-pound tray fell into her hands, and on or about October 19, 2002 when she had to use her "right hand as a stick" to perform her work. It appears that the Office had previously accepted that appellant sustained right hand or arm tendinitis in March 1999 (file number 13-1184162) and an aggravation of preexisting osteoarthritis of her right hand on July 31, 2000 (file number 13-2016911).

The Board, having reviewed the case record submitted by the Office and the rationale for denying appellant's claim, finds that the record is incomplete as it does not contain numerous documents concerning other claims filed by appellant which would be necessary to reasonably evaluate the present claim. The absence of these documents precludes the Board from reviewing the grounds upon which the Office relied in determining that appellant did not meet her burden of

¹¹ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹² 5 U.S.C. § 8122(a).

¹³ 5 U.S.C. § 8122(b).

¹⁴ *Emma L. Brooks*, 37 ECAB 407, 411 (1986).

¹⁵ 5 U.S.C. § 8122(a)(1); see *Jose Salaz*, 41 ECAB 743, 746 (1990); *Kathryn A. Bernal*, 38 ECAB 470, 472 (1987).

¹⁶ 5 U.S.C. §§ 8119, 8122(a)(2).

proof to establish that she sustained employment-related right upper extremity conditions and periods of disability other than those already accepted by the Office.

In determining that appellant's claim for a February 2, 1998 injury was barred by the three-year time limitations of the Act, the Office indicated that appellant first mentioned the February 2, 1998 injury in an April 2001 document submitted in connection with the March 1999 injury handled under file number 13-1184162. The Office therefore concluded that appellant had not filed a claim in connection with the claimed injury or advised her immediate supervisor of its occurrence within the prescribed period.¹⁷ However, the record as currently assembled does not contain this document or the bulk of the administrative or medical documents from file number 13-1184162 pertaining to the March 1999 injury. In determining that appellant was not entitled to any more periods of disability compensation in connection with the March 1999 injury, the Office indicated that compensation had been properly terminated effective November 3, 2002 in connection with this injury claim. The current record does not contain any documentation regarding such a termination of compensation and the Board is unable to evaluate whether there was an adequate basis for the Office to conclude that appellant is not entitled to any more compensation in connection with this injury. In determining that appellant was not entitled to any more periods of disability compensation in connection with her July 31, 2000 injury handled under file number 13-2016911, the Office indicated that compensation had been properly terminated effective August 9, 2000 in connection with this injury claim. However, the record does not contain any records, whether administrative or medical, regarding the July 31, 2000 injury claim.

Because the record forwarded by the Office will not allow the Board an opportunity for an informed adjudication of the appeal, the case record will be returned to the Office for proper assemblage of the case record. This assemblage should consolidate the various claims filed by appellant which pertained to her right upper extremity. After such development it deems necessary, the Office should issue an appropriate decision on the merits which preserves appellant's right of appeal to the Board and which adequately addresses the question of whether she sustained employment-related right upper extremity conditions or periods of disability other than those already accepted by the Office.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained employment-related right upper extremity conditions or periods of disability other than those already accepted by the Office. The case is remanded to the Office for further development to include proper assemblage of the case record and the issuance of an appropriate merit decision.

¹⁷ See *supra* notes 12 through 16 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 28, 2005 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Office.

Issued: March 28, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board